EXECUTIVE SUMMARY

INTRODUCTION

In Mid States Coalition for Progress v. STB, 345 F.3d 520 (8th Cir. 2003) (Mid States), the court vacated and partially remanded the Board's decision in the Powder River Basin Expansion Project, a rail line construction project proposed by the Dakota, Minnesota & Eastern Railroad Corporation (DM&E) (see Mid States attached to the Draft SEIS at Appendix A). In response to the court's remand, the Surface Transportation Board's (Board or STB) Section of Environmental Analysis (SEA), in conjunction with five federal cooperating agencies (the United States Department of Agriculture's Forest Service, the United States Department of Interior's Bureaus of Land Management and Reclamation, the United States Army Corps of Engineers, and the Coast Guard), prepared a focused Draft Supplemental Environmental Impact Statement (Draft SEIS) to address four environmental issues remanded by the 8th Circuit Court of Appeals (court). Consistent with the decision of the court, these issues included:

- Horn noise mitigation,
- Noise and vibration synergies,
- Air quality impacts resulting from any increases in coal consumption and associated air emissions that would be caused by reduced transportation rates available as a result of the proposed project, and
- Programmatic Agreement governing cultural resources.

SEA received comments on the Draft SEIS from 45 Federal, state, and local agencies, Native American Tribes, organizations, and concerned citizens. These comments address the four remanded issues, as well as issues upheld by the court, unchallenged in Mid States, or raised for the first time in this proceeding in response to the Draft SEIS. SEA has carefully considered all the comments and has prepared this Final SEIS to respond to the issues and concerns raised by the commenters. The comments are summarized and generally discussed in Chapters 2 through 5 of this Final SEIS,

addressing each of the remanded issue areas. In Chapter 6 of this Final SEIS, SEA addresses, as appropriate, the comments on other issues that have been raised. In addition, each comment on the Draft SEIS, and a response to it are included in Appendix A. As discussed below, in this Final SEIS SEA generally reaffirms the conclusions in the Draft SEIS. With the exception of a modification to existing mitigation condition Number 29 (to expand the duties of DM&E's community liaison(s) to encompass assistance in the possible establishment of one or more quiet zones), SEA does not recommend that the Board impose any mitigation in addition to what the Board already has imposed. A complete list of the Board's existing mitigation, including the recommended changes to condition Number 29, is attached at the end of this Executive Summary.

The issuance of this Final SEIS concludes the Board's environmental review process. The Board will next issue a final decision, based on the information in the Draft and Final SEIS and all the comments received, as well as the environmental information previously amassed in the EIS. The Board will determine whether to again give its approval to the project, and what additional mitigation, if any, would be appropriate to impose. The cooperating agencies will also issue decisions under their own governing statutes, based on the EIS, SEIS, and various applications submitted to those agencies by DM&E.

DM&E cannot begin construction of its new line until the Board issues a final decision approving DM&E's Application and the decision has become effective. Under the CEQ regulations at 40 CFR 1506.10(b), no decision of the Board or any cooperating agency on DM&E's proposal may be made until 30 days after the Environmental Protection Agency (EPA) publishes a Notice of Availability of the Final SEIS.

BACKGROUND

In February 1998, the Dakota, Minnesota & Eastern Railroad Corporation (DM&E) sought authority from the Board to construct and operate an approximately 280-mile rail line extension to reach certain coal mines in Wyoming's Powder River Basin (PRB). The proposed line would allow DM&E to become the third rail carrier to transport low-sulfur coal from the PRB and in so doing generate the funds needed to completely upgrade DM&E's existing 598-mile rail main line in South Dakota and Minnesota. In December 1998, the Board issued a decision (1998 Decision) addressing the transportation-related aspects of DM&E's proposal, which became known as the "Powder River Basin Expansion Project." In it, the Board found that the new line, if built, would provide transportation benefits by enabling DM&E to compete with the Union Pacific Railroad Company (UP) and the BNSF Railway Company (BNSF) in the PRB.

Then, to comply with the National Environmental Policy Act, 42 U.S.C. 4321 et seq. (NEPA) and other relevant environmental laws and regulations, SEA prepared a comprehensive Environmental Impact Statement (EIS)—which is available in its entirety on the Board's website at www.std.dot.gov and which SEA incorporates here by reference—as part of an environmental review process that took nearly four years to complete. The EIS was prepared in conjunction with the five federal cooperating agencies, and in consultation with a number of other agencies, including the U.S. Environmental Protection Agency (EPA).

As discussed in more detail in the EIS and in the Draft SEIS, throughout the environmental review process, SEA sought input from agencies, elected officials, organizations, businesses, communities, farmers, ranchers, and other members of the public. SEA also undertook extensive public outreach activities to give interested parties, agencies, Tribes, and the general public the opportunity to

learn about the project, define issues, and actively participate in the environmental review process. An approximately 5,000-page Draft EIS was issued for public review and comment in September 2000. An approximately 2,500-page Final EIS, issued in November 2001, contained further analysis in response to the roughly 8,600 written comments received. In addition to accepting written comments on the Draft EIS, SEA hosted 12 public meetings that were attended by more than 1,700 persons.

In January 2002, the Board issued a decision (2002 Decision) approving the construction and operation of the PRB Expansion Project (Figure ES-1). Based on the environmental information amassed in the EIS, the Board concluded that DM&E's proposal would result in some potentially significant adverse environmental impacts, but that, with SEA's recommended environmental conditions, the impacts would not be severe enough to warrant disapproving the proposed new line in view of the line's significant transportation and public benefits: (1) the introduction of a competitive route from the PRB that would be as much as 390 miles shorter than the other carriers' routes to the areas served by DM&E and (2) the attendant upgrade of DM&E's existing system, enabling improved service to DM&E's existing customers. Accordingly, the Board granted its approval for the line, subject to extensive environmental conditions (147 conditions in all) addressing both short-term (construction-related) impacts, and impacts related to long-term operation of unit coal trains.

In Mid States, the court upheld the Board's determination that this project would be financially viable and the majority of SEA's environmental analysis. However, the court found that additional discussion or analysis was necessary for the four environmental issues noted above. SEA responded to each of the issues remanded by the court in the Draft SEIS prepared for this project. SEA received 45 separate comments on its Draft SEIS and has prepared this Final SEIS to respond to the comments received.

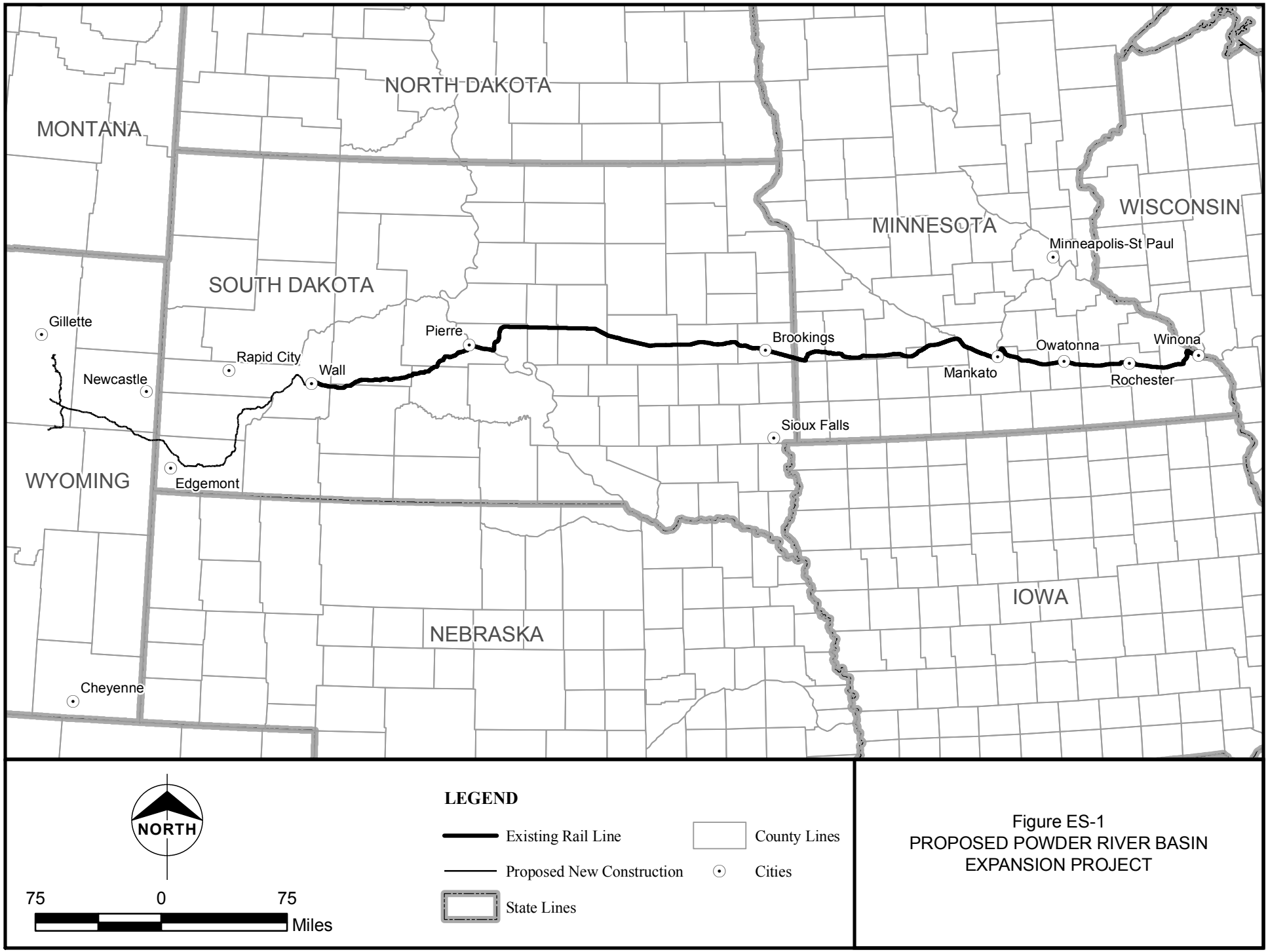

Figure ES-1
PROPOSED POWDER RIVER BASIN
EXPANSION PROJECT

Revised December 16, 2005

GUIDE TO THE FINAL SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT

Chapter 1 of the Final SEIS summarizes the history of the DM&E proceeding before the Board, including the environmental review process. It also discusses the Board's 1998 and 2002 decisions and the subsequent litigation before the court. Further, Chapter 1 presents an overview of SEA's additional analysis of the four remanded issues, which was conducted in a manner consistent with the decision of the court in Mid States, and the comments SEA received on the Draft SEIS. Finally, Chapter 1 sets forth SEA's conclusions on the four remanded issues and provides information on the other issues raised by some of the commenters that go beyond the four remanded issues.

Chapter 2 of the Final SEIS discusses the remanded horn noise issue. It provides a summary of SEA's horn noise mitigation evaluation in the Draft SEIS. The discussion addresses the 14 comments SEA received on the analysis in the Draft SEIS and SEA's preliminary decision not to recommend horn noise mitigation. Chapter 2 focuses on the Federal Railroad Administration's (FRA) recent adoption of a Final Rule concerning horn soundings, which gives communities concerned with horn noise a process to establish quiet zones and whether, notwithstanding the Board's consistent practice of mitigating only wayside noise, mitigation for horn noise would be warranted in this case.

Chapter 3 of the Final SEIS addresses the remanded issue of the combined impact, or synergies, between vibration and noise. Chapter 3 summarizes the results of SEA's additional analysis of the synergistic effects of noise and vibration presented in the Draft SEIS. The chapter explains that SEA received nine comments on the additional analysis, six generally noting that project-related vibration is a concern, one stating that project-related vibration would be insignificant, one suggesting that SEA's analysis was inadequate, and one finding SEA's analysis appropriate and reasonable. The chapter then provides SEA's conclusions on this issue, including a determination of whether SEA's analysis and the comments show that, at the level of vibration anticipated from the proposed project,

any increase in the annoyance from, or perception of, noise would occur, and whether to recommend that the Board impose mitigation measures to address this issue beyond the mitigation previously imposed by the Board.

Chapter 4 discusses the potential indirect air emission impacts of increased coal usage that might result from lower transportation rates as a result of this project. Chapter 4 summarizes SEA's analysis presented in the Draft SEIS, including existing computer simulation models that could be used for this analysis, the reasons for SEA's model selection, and the development of inputs for the model to address the remanded issue. Chapter 4 reiterates the results of the rate sensitivity analysis that was conducted showing that little additional coal would be consumed nationally or regionally as a result of this project, and that the information SEA would need to meaningfully measure air emissions on a local level is unavailable. Chapter 4 then summarizes the 13 comments SEA received on its additional air quality analysis and presents SEA's responses to these comments, as well as SEA's final recommendations on whether additional air quality mitigation beyond that previously imposed by the Board is warranted.

Chapter 5 explains that the Board has met its obligations under the National Historic Preservation Act in this matter because, although a Programmatic Agreement governing the historic preservation process was not executed at the time of the issuance of the 2002 Decision, one is now in place. Chapter 5 summarizes and responds to the four comments received on the Programmatic Agreement and other cultural resources issues.

Chapter 6 responds to issues raised by commenters that are outside the four issues remanded by the court, including the potential effects on this project of DM&E's recent acquisition of the former I&M Rail Link.

Finally, Appendix A contains the 45 comments SEA received on the Draft SEIS and SEA's individual response to each comment.

CONCLUSIONS OF THE FINAL SEIS

SEA thanks all those who submitted comments on the Draft SEIS. Following thorough consideration of the comments, SEA has prepared this Final SEIS presenting its responses to each of the comments received. For the reasons presented in more detail in the chapters of the Final SEIS, SEA makes the following final conclusions and recommendations:

- **Horn Noise.** After reviewing the 14 horn noise-related comments on the Draft SEIS and conducting a thorough review and additional evaluation of its preliminary determination presented in the Draft SEIS not to recommend specific horn noise mitigation, SEA reaffirms its prior determination. SEA's decision not to recommend horn noise mitigation is based on the following:
  - Safety is of paramount importance to SEA and the Board.
  - Train horn soundings are a safety issue regulated by FRA.
  - FRA's Final Rule establishing train horn sounding regulations and procedures to establish quiet zones now provides all of the communities affected by this project the opportunity to eliminate or reduce train horn soundings without compromising safety through community and railroad cooperation.
  - Imposing the cost of establishing a quiet zone on DM&E would not be appropriate because under FRA's Final Rule, implementation of quiet zones and the installation and maintenance of supplementary safety measures (SSMs) and alternative safety measures (ASMs) necessary to establish quiet zones, including the funding of such measures, is the responsibility of the community.

- Help with funding for quiet zone improvements is available from a variety of Federal, state, and local sources.
- The Board has never imposed mitigation for horn (as opposed to wayside) noise, so that doing so here would depart from the Board's consistent approach in rail merger and construction cases of only mitigating wayside noise.
- Neither Rochester nor Chester, Minnesota present circumstances so extraordinary as to warrant departing from the Board's consistent practice. Trains travel through residential communities all around the country and the existing DM&E rail line is not directly adjacent to the Mayo Clinic, but rather ranges from two to five blocks away.
- Numerous agreements negotiated between communities along the existing rail line and DM&E address the concerns of the local communities, and Rochester, Chester, and the other communities without negotiated agreements are free to develop their own agreements with DM&E.
- Cost—given the broad geographic scope of this 900-mile project (including both the new and existing line)—requiring DM&E to mitigate the thousands of sensitive noise receptors potentially affected by horn noise by means such as insulation, sound barriers, or air conditioning to reduce the need to open windows for ventilation would be very costly.
- Sound barriers, particularly on both sides of the rail line, would create potential safety hazards and might not be effective because numerous road crossings in Rochester and other communities at issue here would create openings in the barriers, which would allow sound to escape.

- In many locations, sound barriers would be constructed along the backyards of adjacent residences. These walls would create a significant, permanent visual impairment in these areas. Maintenance and potential vandalism (particularly graffiti) would create ongoing concerns and cost issues for the railroad, the community, and adjacent residents.
- Sound barriers would also create significant visual obstructions to motorists and locomotive engineers when approaching grade crossings, preventing motorists from seeing approaching trains and engineers from seeing traffic at grade crossings until nearly at the crossing, which could leave insufficient time for vehicles or trains to slow or stop to avoid collisions.
- Portions of an existing bike/walking trail in Rochester would likely have to be relocated onto private property adjacent to the rail right-of-way to avoid being located between sound barrier walls.
- The installation of grade crossing improvements and the grade separated crossings that would be required in Rochester and Pierre, South Dakota, under the Board's current mitigation, would reduce horn noise to some extent.
- As indicated in the EIS, because many of the noise sensitive receptor locations with substantial horn noise would also experience wayside noise levels of L_{dn} 70 dBA or higher, they would already benefit from the Board's wayside noise mitigation.
- DM&E would not reach its full operational level of 100 million tons of annual coal transportation for several years after coal operations begin, and because several alternative interchange locations along DM&E's existing system would allow interchange of coal traffic with other carriers, even at the full 100-million-ton level, some communities, especially those further east, might never experience the full level of 37 trains per day and associated levels of noise, including horn noise, that could result from this project.

– The Board has already imposed significant mitigation beyond what the Board has imposed in any prior case (147 separate conditions, including 11 addressing noise).

Nevertheless, given the concerns raised by the commentors about horn noise and the potential costs of establishing a quiet zone, SEA is recommending that the Board revise its condition Number 29 to require, among other functions, DM&E's community liaison(s), to assist communities or other entities in establishing quiet zones. As the revised condition makes clear, such assistance could include coordination with FRA for identification of appropriate supplemental and alternative safety measures at grade crossings where quiet zones are desired; identifying potential sources of funding; providing assistance preparing funding applications and grant requests; and coordinating with representatives of potential lending organizations for the purpose of establishing quiet zones.

- **Noise and Vibration Synergies.** None of the comments cast doubt on SEA's conclusion in the Draft SEIS that, at the levels of vibration anticipated from the proposed project, no significant increase in the annoyance from or perception of noise would occur. As such, SEA finds no reason to modify its prior noise and vibration conclusions, or include mitigation measures beyond those previously imposed to address these issues.

- **Air Emissions.** None of the comments showed that a model other than the Department of Energy, Energy Information Administration's "NEMS" model (National Energy Modeling System) would have provided better results on the remanded air emissions issue. Nor did the commenters persuade SEA that the decision to perform a rate sensitivity analysis, using NEMS, to forecast changes in coal usage with DM&E's entrance into the marketplace was inappropriate, or that the result reached were

incorrect. Accordingly, SEA stands by the analysis and the conclusions in Chapter 4 of the Draft SEIS on the air emissions issue remanded by the court and is not recommending any additional air quality mitigation beyond that previously imposed by the Board. SEA's determination is based on the following:

- It was reasonable to use NEMS in this case, as NEMS is the model used by the government for energy use prediction and also forecasts associated air emissions changes. In addition, NEMS was available to SEA at no cost.
- The 20-25 year modeling period in NEMS is sufficiently long and any longer modeling would be speculative because many other factors unrelated to the DM&E construction could affect air emissions.
- Commenters did not show that the inputs used for the NEMS study were unreasonable; that the decision to undertake a rate sensitivity analysis was inappropriate; or that the results reached in the analysis were incorrect.
- Based on the study, little additional coal would be consumed nationally if the DM&E PRB Expansion Project were built, and the associated impacts on national air emissions also would be minor.
- The NEMS study indicates that regionally, impacts on coal usage and air emissions would be small. Moreover, any regional increases in air emissions would be offset by decreases in other regions and constrained by applicable environmental laws, including new regulatory requirements that are not reflected in the NEMS study: The Clean Air Interstate Rule (CAIR) and EPA's new mercury rule.
- SEA cannot rule out that, at certain locations, there could be more coal consumed as a result of this project, and therefore, increased air emissions. But because the information that SEA would need to meaningfully measure air emissions on a local basis is unknowable, any attempt to predict and evaluate potential increased air emissions on a local level would be largely speculation. Therefore, SEA properly

followed the procedures set out by the Council on Environmental Quality at 40 CFR 1502.22(b) for addressing impacts where critical information is unavailable or incomplete.

- Given the minor increases in coal usage and air emissions on a national and regional basis that are anticipated, and the lack of critical information needed to quantify impacts on a local basis, SEA does not recommend additional air quality mitigation beyond that previously imposed by the Board. Additional mitigation also would not be warranted because information such as the individual plants to which DM&E might transport PRB coal—and how much PRB coal these plants would consume over the PRB coal they would consume anyway—cannot be determined in advance. Mitigation to address potential local impacts on air emissions also is inappropriate because the Board can not impose mitigation directly on power plants in a rail construction case.
- Even if SEA could fashion a mitigation measure in this proceeding that could appropriately limit the amount of PRB coal to be delivered to particular plants, such mitigation would ultimately be ineffective. That is because, if DM&E could only deliver a certain amount of PRB coal to a particular power plant (or plants), those plants could simply look to BNSF or UP to supply any additional PRB coal that they might want.

- **Programmatic Agreement**. SEA has developed an appropriate Programmatic Agreement, addressing Native American, Tribal, and cultural resource issues, for the proposed project. The Programmatic Agreement has been executed, thus satisfying the concerns of the court.

- **Other Issues**.
  - The IMRL Acquisition SEA has determined that, in light of the Board's specific conditions in the IMRL case forbidding DM&E to transport unit coal trains from the PRB over the IMRL rail lines until completion of an appropriate environmental review, DM&E's purchase of these rail lines does not constitute a changed circumstance warranting additional environmental review in this SEIS. The Board's decisions in the IMRL acquisition specifically state that, should DM&E succeed in obtaining coal traffic that would be routed over the IMRL lines, DM&E would be required to notify the Board so that the Board could undertake an environmental review of the associated environmental impacts before DM&E could handle coal trains related to this project over the IMRL lines.
  - Wetlands SEA is confident that if the PRB Expansion Project is again approved, EPA's information needs related to potential project impacts to wetlands and wetland mitigation would be appropriately addressed as part of the Clean Water Act, Section 404 permitting process, required as part of the Board's existing mitigation, in which EPA will be involved.
  - Environmental Justice SEA has determined that no additional environmental justice analysis beyond the evaluation conducted in the EIS is necessary or appropriate in this case.
  - Implementing Mitigation SEA sees no need to recommend that the Board revise the mitigation conditions in the 2002 Decision that were linked to particular levels of annual coal transportation.

PUBLIC COMMENT AND REVIEW OF THE DRAFT SEIS

EPA published a notice in the Federal Register announcing the availability of the Draft SEIS on April 22, 2005. That notice started the clock running on the 45-day public comment period, which ran to and including June 6, 2005.

SEA encouraged the agencies, Tribes, all interested parties, and members of the general public to submit written comments on all aspects of the issues addressed in the Draft SEIS. In light of the court's decision in Mid States affirming all of the transportation-related issues and most of the environmental issues raised by the parties on appeal, SEA indicated that it intended to address in the SEIS only the four environmental issues remanded by the court to the Board for further environmental review. SEA made it clear in the Draft SEIS that only comments on the remanded issues would be considered, because the record in this case was closed on all other issues addressed by the court or unchallenged.

SEA distributed over 900 copies of the complete Draft SEIS, including over 800 copies to Federal, state, and local agencies and entities, Tribes, and interested citizens as well as copies to over 90 local libraries. Additionally, SEA distributed the Executive Summary and Chapter 1 – Introduction (providing an overview of the Draft SEIS and SEA's conclusions in the Draft SEIS) to over 1,600 Federal, state, and local agencies and officials, and interested citizens. SEA received 45 comments on the Draft SEIS, raising concerns about the four remanded issues or suggesting that SEA also should consider in this SEIS certain additional issues that were not remanded or before the court in Mid States. SEA has addressed all of the comments on the Draft SEIS in this Final SEIS, in the chapters on the remanded issues (Chapters 2 through 5), Chapter 6 (discussing other issues raised) and in Appendix A, which sets forth the 45 comments and a response to each comment.

DISTRIBUTION AND AVAILABILITY OF THE FINAL SEIS

SEA has mailed the Final SEIS to key reviewing agencies and all those individuals providing comments on the Draft SEIS. SEA has also distributed the Final SEIS to over 90 local public libraries, and asked that the Final EIS be made available in their reference section. Futhermore, the entire document is available on the Board's website (http://www.stb.dot.gov) under "Decisions & Notices," and listed as "Environmental Review" by Service Date (December 30, 2005), Docket Number (FD 33407), Docket Prefix (FD) or Decision ID Number (20743).

Additionally, SEA has distributed over 1,500 copies of the Executive Summary of this Final SEIS to parties of record, the environmental distribution list, and other interested agencies and entities, Tribes, and citizens. The Executive Summary and accompanying cover letter announce the availability of the Final SEIS and provide information and instructions on how to access a copy of the entire document. In accordance with CEQ regulations, SEA has submitted the Final SEIS to EPA for EPA's issuance of a formal public notice of availability.

Issuance of this Final SEIS completes the Board's environmental review process. In accordance with CEQ regulations implementing NEPA at 40 CFR 1506.10(b), no agency decision on the proposed action may be made until 30 days after EPA publishes its Notice of Availability of the Final SEIS. Congress has not established a statutory time frame within which the Board must issue its final decision, and the Board has not announced a date for issuance of the final decision. However, in the interest of bringing this matter to closure, the Board will act as promptly as possible.

In its final decision, the Board will consider the entire SEIS, including all the public comments and, as directed by the court, will assess the potential environmental impacts of the four remanded environmental issues and the cost of any necessary additional mitigation to address those impacts. Then

the Board will re-weigh the merits of the underlying proposal, to reflect those impacts and costs, and to impose appropriate additional environmental mitigation conditions if it decides again to approve the project. No project-related construction may begin until the Board's final decision has been issued and has become effective. The cooperating agencies will also issue decisions under their own governing statutes, based on the EIS, SEIS, and various applications submitted by DM&E.

THE BOARD'S MITIGATION - (including the Mitigation Imposed in the 2002 Decision and the Recommended Change to Condition Number 29)

GENERAL MITIGATION MEASURES

SAFETY

Grade Crossing/Warning Devices

1A. To address potential safety impacts at highway/rail grade crossings, Applicant, in accordance with its Grade Crossing Mitigation Plan, shall apply its proposed PCAPS-based grade-crossing protection formula to the crossings on the existing rail line in South Dakota and Minnesota, for the anticipated tonnage levels of coal to be moved (20 million tons, 50 million tons, or 100 million tons annually).

Applicant shall consult with appropriate Federal and State transportation agencies to determine the final design and other details of the grade-crossing protections. Implementation of all grade-crossing protections shall be subject to the review and approval of FRA and the appropriate State Departments of Transportation. As agreed to by Applicant, Applicant shall pay 90 percent of the costs associated with these project-related grade-crossing protection upgrades on Applicant's existing line.

This Condition shall not apply to crossings in communities that have executed Negotiated Agreements with Applicant that address the communities' safety concerns. In those cases, the terms of the Negotiated Agreement will apply, so long as implementation of the Negotiated Agreement achieves at least an equivalent level of grade-crossing protection. Applicant shall complete these grade-crossing protections upon reaching the annual tonnage level of coal (20 million tons, 50 million tons, or 100 million tons annually) specified in its plan and shall certify to the Board such completion as part of its quarterly reports required by Condition 147.

1B. To address potential safety impacts at highway/rail grade-crossings, Applicant shall apply its proposed PCAPS-based grade-crossing protection formula to the crossings on the new rail line in Wyoming, South Dakota, and the Mankato area of Minnesota (assuming that Alternative M-2 is approved and constructed), for the anticipated tonnage levels of coal to be moved (20 million tons, 50 million tons, or 100 million tons annually).

Applicant shall consult with appropriate Federal and State transportation agencies to determine the final design and other details of the grad-crossing protections and grade separations on the new rail line. Implementation of all grade-crossing protections and separations on the new rail line shall be subject to the review and approval of FRA and the appropriate State Departments of Transportation. As agreed to by Applicant, Applicant shall pay 100 percent of the costs associated with these project-related grade-crossing protections along the new rail line.

This Condition shall not apply to crossings where communities or other entities have executed Negotiated Agreements with Applicant that address safety concerns. In those cases, the terms of the Negotiated Agreement will apply, so long as implementation of the Negotiated Agreement achieves at least an equivalent level of grade-crossing protection. Applicant shall complete these grade-crossing protections prior to moving annual tonnage level of coal (20 million tons, 50 million tons, or 100 million tons annually) specified in its plan and shall certify to the Board such completion as part of its quarterly reports required by Condition 147.

2. Applicant shall maintain the new and existing rail line and grade-crossing warning devices according to FRA track safety standards (49 CFR Part 213).

Emergency Response

3. At least one month prior to initiation of construction activities in the area, Applicant shall provide the information described below, as well as any additional information, as appropriate, to each local emergency response organization or other similar body for communities within the project area regarding project-related construction and operation of both the new and existing rail line:

    - The schedule for construction throughout the project area, including the sequence of construction and reconstruction of public grade crossings and approximate schedule for these activities at each crossing.

    - Expected schedule for change in rail line operations along Applicant's existing system, including when changes in train speeds and levels of traffic are anticipated to occur, and current and new train speeds and levels of rail traffic.

- A toll-free number for the Applicant's contact who shall be available to answer questions or attend meetings for the purpose of informing emergency-service providers about the project construction and operation.

- Revisions to this information, including changes in construction schedule, as appropriate.

4. Applicant shall consult with the communities of Rochester, Owatonna, and Mankato, Minnesota, and Brookings and Pierre, South Dakota, and any other affected communities that so request, to coordinate train movements and emergency response and discuss the possible installation by the Applicant of a state-of-the-art electronic display board, or equivalent technology, such as a real time or Global Positioning System (GPS) train location monitoring system in the local emergency-response center of each community showing the location of trains and/or the position of grade crossing warning signals.

5. Applicant shall coordinate with the appropriate state Departments of Transportation, counties, and affected communities to develop a program for installation of temporary notification signs or message boards on railroad property at public grade-crossings, determined by the State and/or County to warrant such measures, clearly advising motorists of the impending increase in train traffic and train speeds along its existing system and commencement of operations along its new rail line. The format and lettering of these signs shall comply with the U.S. Department of Transportation (DOT), Federal Highway Administration's Manual on Uniform Traffic Control Devices, and shall be in place no less than 30 days before, and 6 months after, completion of project-related construction and reconstruction activities in the area. As an alternative, Applicant shall coordinate with the state Departments of Transportation to develop a mutually satisfactory media campaign to be conducted by Applicant throughout the counties and communities surrounding the rail line providing information and notice to the public of project-related changes along its existing system and commencement of operations along its new rail line. This campaign shall include the use of different media (radio, television, newspaper, public meetings, etc.) and may include such things as public service announcements, advertisements, or legal notices. Prior to moving coal trains to and from the PRB, Applicant shall certify to the Board that it has complied with this condition as part of its quarterly reports required by Condition 147.

6. For each of the public grade-crossings on the new and existing rail line, Applicant shall provide and maintain permanent signs prominently displaying both a toll-free telephone number and a unique grade crossing identification number in compliance with Federal Highway Regulations (23 CFR Part 655). The toll-free number shall be answered 24 hours per day by Applicant's personnel. Where Applicant's right-of-way is close to another rail carrier's crossing, Applicant

shall coordinate with the other rail carrier to establish a procedure regarding reported accidents and grade crossing device malfunctions.

7. Applicant shall consult with interested communities along its new and existing rail line to identify alternative safety measures to eliminate the need to sound train horns in the community, in accordance with FRA's final rule on the *Use of Locomotive Horns at Highway-Rail Grade Crossings*.

8. Applicant shall install reflective material on the back of all passive crossing warning devices, such as crossbucks, on the new and existing rail line. Reflective material shall be installed so that headlights from vehicles approaching the grade crossing on the opposite side of the rail line will strike the material and illuminate it to provide a continual illumination in the absence of a passing train and a flashing appearance when a train is passing due to the space between the rail cars. Prior to moving coal trains to and from the PRB, Applicant shall certify to the Board that it has complied with this condition as part of its quarterly reports required by Condition 147.

9. To the extent practicable, Applicant shall minimize trains blocking grade-crossings throughout its system.

Track Warning Devices and Track Infrastructure

10. Applicant shall properly maintain its new and existing rail line. Maintenance shall include trimming vegetation on railroad property that obscures visibility of oncoming trains and assuring that rail, railroad ties, track fastenings, and ballast material are in good repair, and that warning devices operate properly and are legible.

Hazardous Material Handling Issues

11. Prior to initiating any project-related construction and reconstruction activities, Applicant shall develop a Spill Prevention, Control, and Countermeasure Plan (Plan) to prevent spills of oil or other petroleum products and other hazardous materials during construction and reconstruction activities, and operation and maintenance of the rail line. At a minimum, the Plan shall address the following:

- Definition of what constitutes a spill.
- Requirements and procedures for reporting spills to appropriate government agencies.
- Methods of containing, recovering, and cleaning up spilled material.
- Equipment available to respond to spills and where the equipment is located.

- List of government agencies and Applicant's management personnel to be consulted in the event of a spill.

In the event of a spill, Applicant shall comply with its Plan and applicable Federal, state, and local regulations pertaining to containment of the spill and appropriate clean up.

12. Applicant shall comply with DOT Hazardous Materials regulations (49 CFR Parts 171 and 179) when handling, storing, or disposing of hazardous materials. Applicant shall dispose of all materials that cannot be reused in accordance with applicable Federal, State, and local waste management regulations.

13. Applicant shall coordinate with the U.S. Environmental Protection Agency, Minnesota Department of Natural Resources, Minnesota Pollution Control Agency, South Dakota Department of Environment and Natural Resources, and Wyoming Department of Environmental Quality to determine the exact location of hazardous-material sites known to occur within the existing or proposed rail line rights-of-way and comply with applicable laws concerning these sites.

14. Applicant shall develop internal emergency response plans to allow for agencies and individuals to be notified in an emergency and to locate and inventory emergency equipment for use in dealing with emergencies. Applicant shall provide the emergency-response plans to the relevant state and local entities prior to moving coal trains to and from the PRB.

15. Applicant shall notify the United States Fish and Wildlife Service, and the appropriate State departments of natural resources, in the event of a reportable hazardous materials release with the potential to affect wetlands or wildlife habitat(s), particularly those of Federally threatened or endangered species.

16. Applicant shall use established standards for recycling or reuse of construction materials such as ballast and rail ties. When recycling construction materials is not a viable option, Applicant shall use disposal methods that comply with applicable solid hazardous waste regulations.

Fire Prevention

17. Prior to initiating any construction activities related to this project, Applicant shall, in consultation with the Natural Resource Conservation Service, local grazing organizations, appropriate Federal agencies, and local fire and emergency response departments, develop an adequate

plan for fire prevention and suppression and subsequent land restoration, including natural habitats, during construction and operation of both the new and existing rail line. To the extent practicable, Applicant's plan shall ensure that all locomotives are equipped with functioning spark arresters on exhaust stacks and fire extinguishers suitable for flammable liquid fires and provide for the installation of low-spark brake shoes.

Miscellaneous

18. During project-related construction at grade-crossings, when practicable, Applicant shall maintain at least one open lane of traffic at all times or provide for detours and associated signage, as appropriate, to allow for the quick passage of emergency and other vehicles.

19. In undertaking project-related construction activities, Applicant shall use construction materials and safety practices recommended by the American Railway Engineering and Maintenance of Way Association (AREMA) and the recommended standards for track construction in the AREMA Manual for Railway Engineering. Applicant shall maintain the track and provide for track inspection in compliance with AREMA and FRA requirements at 49 CFR 213.

20. Applicant shall adhere to Federal Occupational Safety and Health Administration (OSHA), FRA, and State construction and operational safety regulations to minimize the potential for accidents.

21. Where practicable, Applicant shall refuel locomotives at designated refueling locations. Applicant shall exercise care during refueling to prevent overflows. In no event shall Applicant conduct refueling activities in a location where an inadvertent spill would enter a watercourse, wetland, or other environmentally sensitive area.

22. Applicant shall make Operation Lifesaver programs available to communities, schools, and other organizations located along the new and existing rail line.

23. Applicant shall consult and coordinate with school districts regarding placement on railroad property of equipment to permit use of in-vehicle warning devices on school buses.

24. Applicant shall assure that roadway approaches and rail line crossings for both new and existing grade crossings are constructed or re-constructed according to the standards of the American Association of State Highway and Transportation Officials (AASHTO) design manual, applicable state rules, guidelines, or statutes, and the AREMA standards. The goal of grade crossing design should be to eliminate rough or humped crossings to the extent practicable.

TRANSPORTATION

25. To the extent practicable, Applicant shall confine all project-related construction traffic to a temporary access road within the right-of-way or established public roads. Where traffic cannot be confined to temporary access roads or established public roads, Applicant shall make necessary arrangements with landowners to gain access from private roadways. The temporary access roads shall be used only during project-related construction. Any temporary access roads constructed outside the rail line right-of-way shall be removed upon completion of construction, unless otherwise agreed to in accordance with Condition 80.

26. Applicant shall consult with the State Departments of Transportation in Minnesota, South Dakota, and Wyoming and local road authorities in the affected counties or townships to ensure that project-related construction and reconstruction activities are consistent with state and local transportation plans, projects and proposals.

27. Applicant shall coordinate with the FRA, the state Departments of Transportation in Minnesota, South Dakota, and Wyoming, and local road authorities to develop a plan for the identification and eventual closure of limited-use public crossings, particularly those at or below 100 Average Daily Traffic, where appropriate alternative public crossings are available.

28. To provide access for the safe movement of farm equipment to fields and pastures which otherwise would have to operate on public highways, as a result of road closures following construction and during operation of Applicant's rail yards, Applicant shall provide or develop appropriate alternative access to these fields and pastures. Alternatives for access could include development of frontage roads adjacent to yard boundaries, agreements for farmers to coordinate with the yard master to cross through the yard, if rail operations and safety conditions permit, or development of additional access roads.

LAND USE

29. Prior to initiation of construction or reconstruction activities related to this project, Applicant shall establish Community Liaison(s) to consult with affected communities, farmers, ranchers, businesses, landowners, and agencies; develop cooperative solutions to local concerns, be available for public meetings; conduct periodic public outreach; and assist communities and other entities in establishing quiet zones. Such assistance may include coordination with FRA for identification of appropriate supplemental and alternative safety measures at grade crossings where quiet zones are desired, identifying potential sources of funding, providing assistance

preparing funding applications and grant requests, and coordinating with representatives of potential lending organizations. The Community Liaison(s) shall have access to Applicant's upper management. Applicant shall provide the name and phone number of the Community Liaison(s) to mayors and other appropriate local officials in each community through which the new and existing rail line passes.

30. In many communities, adjacent property owners have encroached on Applicant's existing right-of-way. Applicant shall make reasonable attempts to identify and notify these individuals of its proposed project-related reconstruction schedule through these areas prior to beginning reconstruction activities in the area.

31. Applicant shall erect temporary construction fencing, where appropriate, or permanent fencing, prior to initiation of construction or reconstruction activities related to this project. If practicable, in incorporated areas, permanent fencing shall consist of 8-foot high chain link fence installed along all rail line right-of-way adjacent to residential property. Applicant shall consult with appropriate state and local authorities in unincorporated areas to determine appropriate fencing design. Applicant shall inspect all fencing regularly and promptly repair any damaged fencing. This condition shall not apply to those communities that have executed Negotiated Agreements with Applicant.

32. In rural areas, Applicant shall minimize the installation of fencing to areas where safety is a concern and areas where fencing is required to prevent livestock wandering on to the rail line. Applicant shall consult with Tribal wildlife officials, the South Dakota Department of Game, Fish and Parks, the Wyoming Game and Fish Department, and the Minnesota Department of Natural Resources, other applicable agencies, and affected landowners to determine appropriate fencing designs for each state. Fencing in rural areas should generally consist of 5-strand barbed wire fence. In order to protect antelope and other big game, Applicant shall encourage landowners in areas where antelope are present to allow construction of 4-strand fence with a smooth bottom wire at least 16 inches above ground level and the top wire not more than 42 inches high, or other designs approved by the applicable state wildlife agency. Applicant shall consult with appropriate state and local authorities in rural areas to determine appropriate fencing design. In areas where the rail line is not fenced, appropriate signage shall be installed to protect the public.

33. At least 48 hours prior to initiating herbicide applications, Applicant shall make reasonable attempts to notify property owners adjacent to the right-of-way of its anticipated schedule for herbicide application. Reasonable attempts could include posting a notice on its web site or publishing its schedule in local newspapers.

34. Applicant shall ensure that all areas disturbed by project-related construction or reconstruction activities which are not owned by the railroad (such as access roads, haul roads, crane pads, and borrow pits), are promptly restored as closely to their original condition as is practical following conclusion of project-related construction or reconstruction activities.

Applicant shall coordinate with the state Departments of Transportation and Federal and state land management agencies, subject to approval of the land owner, to determine if temporary access roads developed for project-related construction should be removed and the area restored to its previous condition or retained for maintenance by the agency, state, or county to provide additional access to public lands.

Agriculture/Ranching

35. Applicant shall provide its project-related reconstruction and construction schedule to affected farmers and ranchers to allow them to determine whether they should continue to crop or graze in right-of-way areas or discontinue such activities due to impending construction and reconstruction activities.

36. Applicant's Community Liaison(s), established by Condition 29, shall work with farmers and ranchers to remedy any damage to crops, pastures, or rangelands caused by Applicant's project-related construction or reconstruction activities and develop appropriate measures to prevent encroachment into the rail line right-of-way. The Community Liaison(s) also shall have authority to provide information on anticipated train schedules to farmers and ranchers to facilitate movement of equipment or livestock from one side of the rail line to the other.

37. In negotiations with farmers and ranchers, Applicant shall be guided by the Land Use Mitigation Policy and Plan negotiated between the Applicant with the Landowner Advisory Board, which addresses the following areas of concern:

- Direct and indirect land loss.
- Displacement of capital improvements (wells, windmills, corrals, outbuildings, irrigation systems, etc.).
- Noxious weed control.
- Fencing.
- Livestock casualty.
- Fire prevention and suppression.

- Fire casualty.
- Construction-related impacts.

Residential

38. Applicant's project-related construction vehicles, equipment, and workers shall not access work areas by crossing residential properties unless negotiated with and agreed to by the property owner.

39. In residential areas, Applicant shall store its equipment and materials in established storage areas or on Applicant's property to the extent practicable.

40. The Community Liaison(s), established in Condition 29, shall work with affected landowners to appropriately redress any damage to the landowner's property caused by Applicant's project-related construction or reconstruction activities.

Business and Industrial

41. Applicant's project-related construction vehicles, equipment, and workers shall not access work areas by crossing business or industrial areas, including parking areas or driveways, unless negotiated with, and agreed to by, the business owner.

42. In business and industrial areas, Applicant's project-related equipment and materials shall be stored in established storage areas or on Applicant's property. Parking of Applicant's equipment, or vehicles, or storage of materials along driveways or in parking lots is prohibited unless agreed to by the property owner.

43. The Community Liaison(s), established in Condition 29, shall work with affected businesses or industries to appropriately redress any damage to the business's property caused by Applicant's project-related construction or reconstruction activities.

44. Applicant shall insure that entrances and exits for businesses are not obstructed by project-related construction activities, except as required to move equipment.

Minerals and Mining

45. To help maintain the existing natural environment to the extent practicable, Applicant shall utilize materials such as rock, gravel, and sand available from local sources in its project-related activities.

46. Applicant shall consult with the owners of existing mines and quarries in the project area, particularly the quarry in Mankato, Minnesota, if Alternative M-3, the existing rail corridor alternative through Mankato, is built, to ensure that project-related construction and reconstruction activities minimize impacts to mine-related operations.

47. Prior to initiating construction of the new rail line, Applicant shall obtain any necessary permits from the U. S. Department of Interior, Bureau of Land Management (BLM) regarding mineral removal and oil and natural gas lessees.

48. Prior to undertaking project-related construction and reconstruction activities, Applicant shall make a reasonable effort to notify all mineral lessees/claimants where the BLM has mineral ownership.

Federal Lands

49. Applicant shall obtain a Special Use Permit from the U.S. Forest Service (USFS) granting an easement for the rail line to cross lands administered by the USFS designated as National Grasslands prior to initiating any project-related construction activities on USFS lands. Any conditions required under this Special Use Permit, in addition to those imposed by the Board, shall be adhered to by Applicant for activities on USFS lands.

50. Applicant shall obtain a permit from the U.S. Department of the Interior's Bureau of Reclamation (Reclamation) for crossing any facilities, irrigation ditches, or canals which are part of the Angostura Irrigation Project. Any conditions required under this permit, in addition to those imposed by the Board, shall be adhered to by Applicant for activities affecting Reclamation lands. In addition, Applicant shall comply with the Memorandum of Agreement executed by Applicant and Reclamation.

51. Applicant shall obtain a right-of-way grant from BLM for the rail line to cross any public lands administered by BLM prior to initiating any project-related construction activities on public lands. Applicant shall comply with the terms and conditions required of this right-of-way grant, in addition to the mitigation imposed by the Board, for activities on public lands administered by BLM.

52. No USFWS lands, such as waterfowl production areas and wetland easements, will be crossed by the project-related construction or reconstruction. However, a new rail yard facility under Alternative C could be located across a wetlands easement. In that event, Applicant shall acquire and provide to the USFWS additional wetlands easement(s), replacing in kind, function, and value, and subject to USFWS approval and necessary environmental reviews and permitting, the wetland easement(s) lost from project-related rail yard construction.

State Lands

53. If any project-related construction activities, including location of new rail line, staging or laydown yards, or access points, either temporary or permanent, are required on state lands, Applicant shall consult with the appropriate state personnel prior to conducting these activities. To the extent practicable, Applicant shall avoid use of public lands as part of project development.

54. Applicant shall consult with managers of State lands to determine peak use periods for the State lands that provide for over-night use. Applicant shall attempt to schedule project-related construction activities to avoid these periods to the extent practical.

Utility Corridors

55. Applicant shall make reasonable efforts to identify all utilities that are reasonably expected to be materially affected by the proposed construction within its existing right-of-way or that cross its existing right-of-way. Applicant shall notify the owner of each such utility identified prior to project-related construction and reconstruction activities and coordinate with the owner to minimize damage to utilities. Applicant shall also consult with utility owners to design the rail line so that utilities are protected during project-related construction and reconstruction activities and subsequent maintenance and operation of Applicant's rail line.

56. Should such previously unidentified utilities be discovered during project-related construction activities, Applicant shall cease construction, take appropriate action to protect the utility, and contact the utility owner immediately. In the event of damage to any utility during project-

related construction, reconstruction, or operation, Applicant shall contact the utility owner immediately and take appropriate remedial action.

57. Applicant shall make reasonable efforts to protect existing drainage tile systems present in agricultural lands adjacent to the rail line right-of-way during project-related construction and reconstruction activities. Applicant shall repair as quickly as practicable, any damage to these systems due to project-related rail construction and reconstruction activities.

58. Applicant shall dispose of all non-recyclable and non-reusable solid waste generated during project-related construction and reconstruction activities in permitted landfills or other disposal sites in accordance with all applicable Federal, state, and local regulations.

WATER RESOURCES

59. Applicant shall obtain all Federal permits, including the Clean Water Act Section 404 and Rivers and Harbors Act of 1899 Section 10 permits, required by the U.S. Army Corps of Engineers, for project-related alteration or encroachment of wetlands, ponds, lakes, streams, or rivers, including the Missouri River, prior to initiation of any project-related construction and reconstruction. Additionally, Applicant shall obtain appropriate permits from the State of Minnesota, including Protected Waters Permits, for impacts to water resources in Minnesota due to project-related construction and reconstruction activities.

60. Applicant shall obtain a National Pollutant Discharge Elimination System (NPDES) permit from each state (Minnesota, South Dakota, Wyoming) affected by project-related construction or reconstruction activities.

61. To minimize sedimentation into streams and waterways, Applicant shall use best management practices, such as silt screens and straw bale dikes, to minimize soil erosion, sedimentation, runoff, and surface instability during project-related construction and reconstruction activities. Applicant shall disturb the smallest area possible around any streams and tributaries, and shall consult with the Natural Resource Conservation Service, Minnesota Department of Natural Resources, South Dakota Department of Game, Fish, and Parks, Minnesota Pollution Control Agency, Wyoming Department of Game and Fish, and the State Departments of Transportation to ensure proper revegetation of disturbed areas as soon as practicable following project-related construction or reconstruction activities.

62. Applicant shall establish staging areas for project-related construction equipment in areas that are not environmentally sensitive in order to control erosion. When project-related construction

activities, such as culvert and bridge work, require work in stream beds, Applicant shall conduct these activities, to the extent practicable, during low flow or periods when the stream is dry.

63. When engaging in any project-related construction activities near streams, Applicant shall construct temporary stream crossings as close to a right angle with the stream as possible. Applicant also shall design temporary bridges to span across the ordinary high water elevations of waterways to the extent practical. Following the project-related construction, Applicant promptly shall remove all temporary construction crossings and restore the area to as close to its original condition as possible.

64. Applicant shall ensure that, when used in its project-related construction activities, cofferdams or check dams consist of native material, sheet pile, sandbags, or other engineered designs matching the local site conditions. All materials used in the construction of cofferdams or check dams shall be completely removed upon completion of construction.

65. Applicant shall establish staging and laydown yards for project-related construction at least 300 feet from wetlands or waterways, if topography permits. If topographic conditions do not permit a 300-foot distance, these areas shall be located no less than 50 feet from the water's edge. Applicant shall not clear any vegetation between the yard area and the waterway or wetlands.

66. Applicant shall inspect all equipment for any oil, gas, diesel, anti-freeze, grease, hydraulic fluid, and other petroleum product leaks. If leaks are found, Applicant shall immediately remove the equipment from the construction zone, and repair or replace it.

67. Applicant shall ensure that all culverts and bridges are clear of debris to avoid potential flooding and stream flow alteration. Applicant shall design all project-related drainage crossing structures to pass a 100 year flood. Applicant shall reconstruct the existing rail line and construct the new rail line in such a way as to maintain current drainage patterns to the extent practicable and not result in new drainage of wetlands. Applicant shall inspect all drainages, bridges, and culverts semi-annually (or more frequently, as seasonal flows dictate) for debris accumulation. Applicant shall promptly remove debris and properly dispose of it in an upland area.

68. To ensure the integrity of the Flood Control Project in Mankato, Minnesota if Alternative M-3, the existing rail corridor alternative through Mankato, is built, Applicant shall coordinate with the U.S. Army Corps of Engineers, the City of Mankato, and other appropriate local agencies in Mankato and obtain any necessary permits to prevent adverse impacts from project-related rail line construction and operation to flood control structures.

69. Applicant shall employ best management practices to control turbidity and disturbance to bottom sediments during project-related construction or rehabilitation of Applicant's bridge over the Missouri River at Pierre, South Dakota.

70. Applicant shall obtain a Bridge Permit from the U.S. Coast Guard for any project-related activities that would result in the extensive modification of Applicant's existing rail bridge over the Missouri River in Pierre, South Dakota or for construction of a new rail bridge over the river.

71. Applicant shall complete project-related construction and reconstruction activities through wetlands, when such wetlands extend outside the rail line right-of-way in continuous segments in order to minimize both the time required to complete construction and the time land adjacent to wetlands is disturbed.

72. Applicant shall ensure that any herbicides used in right-of-way maintenance to control vegetation are approved by EPA and are applied by licensed individuals who shall limit application to the extent necessary for rail operations. Applicant shall ensure that only herbicides determined by EPA to be acceptable for use around waterways shall be applied within 150 feet of perennial streams, rivers, and wetlands. Herbicides shall be applied so as to prevent or minimize drift off of the right-of-way onto adjacent areas.

73. Applicant shall ensure that any wells that could be affected by project-related construction or reconstruction activities are appropriately protected or capped to prevent well and groundwater contamination. If these wells are located on private land, Applicant shall first secure permission from the landowner before undertaking any such activities. In the event that Applicant does not receive such permission upon reasonable request, it may petition the Board to be relieved of this obligation.

74. Applicant shall ensure that new project-related stream, river, and floodplain crossings are appropriately designed to minimize impacts to community-designed floodways. In those areas where a community-designed floodway does not exist, Applicant shall ensure that new waterway crossing structures are sufficient to pass a 100-year flood without increasing the flood level by more than one-half foot.

75. Applicant shall consult with Minnesota Department of Natural Resources to design project-related waterway crossing structures to allow passage of fish.

76. Applicant shall prohibit project-related construction vehicles from driving in or crossing streams at other than established crossing points.

77. Applicant shall, to the extent practicable, ensure that any fill placed below the ordinary high water line of wetlands and streams is clean and free of fine materials. Applicant also shall use fill from local sources where practicable. All stream crossing points shall be returned to their pre-construction contours to the extent practicable, and the crossing banks reseeded or replanted with native species immediately following project-related construction.

RECREATION

78. Applicant shall ensure that adequate clearances and access are provided for safe navigation of recreational boats on the Missouri River at the location of any project-related rehabilitation or construction of Applicant's bridge across the Missouri River at Pierre, South Dakota. Applicant also shall install appropriate warning devices to notify boaters of project-related bridge construction activities and the location of a safe navigation route.

79. If Alternative M-3, the existing rail corridor alternative through Mankato, Minnesota is built, Applicant shall provide appropriate fencing along the rail line in Mankato adjacent to parks, trails, or other recreational areas to provide a safe environment for users of the facilities. Applicant shall consult with the City of Mankato about appropriate fencing design and the possibility of providing landscaping, including vegetative screening.

80. Applicant shall consult with Federal land managers such as the U.S. Forest Service and Bureau of Land Management, and state land managers including the Minnesota Department of Natural Resources, South Dakota Game, Fish and Parks, and Wyoming Game and Fish Department to determine locations where project-related construction and reconstruction activities will result in lost or reduced access to public lands due to temporary road closures or other construction related activities. Applicant shall develop a plan to provide alternative access to these lands during project-related construction and reconstruction activities and operation of unit coal trains to the extent practicable.

AIR QUALITY

81. Applicant shall continue to consult with the Air Quality Working Group, consisting of agencies with appropriate technical expertise which was established for this project, to develop a mutually satisfactory approach to minimize the impacts of regional haze on Class I airsheds resulting from the locomotive emissions of Applicant's PRB coal trains. If no mutually satisfactory approach is developed within one year of the effective date of the Board's decision giving final approval to the PRB Expansion Project, then Applicant shall fund 50 percent of the cost of a mediator to assist the parties to reach an agreement. However, the parties jointly may seek more time to continue their negotiations without a mediator if they believe that would be more productive. If the Working Group and Applicant jointly decide that further consultations and/or mediation would be fruitless, then the Working Group may be disbanded. Applicant shall apprise the Board of the status of the on going Working Group consultations in the quarterly reports required by Condition 147, and shall also notify the Board if a Memorandum of Agreement is executed, or if the Working Group is disbanded.

82. Applicant shall meet the Environmental Protection Agency emissions standards for diesel-electric railroad locomotives (40 CFR Part 92) when purchasing and rebuilding locomotives for movement of unit coal trains throughout its system.

83. Applicant, to the extent practicable, shall adopt fuel saving practices, such as throttle modulation, dynamic braking, increased use of coasting trains, isolation of unneeded horsepower, and shutting down locomotives when not in use for more than an hour when temperatures are above 40 degrees, to reduce overall emissions during project-related operations.

84. To minimize fugitive dust emissions created during project-related construction and reconstruction activities, Applicant shall implement appropriate fugitive dust suppression controls, such as spraying water, applying magnesium chloride treatment, tarp covers for haul vehicles, installation of wind barriers, or other State-approved measures. Applicant shall also regularly operate water trucks on haul roads to reduce dust.

85. Applicant shall obtain appropriate burning permits from the applicable State and local agencies, including the Minnesota Department of Natural Resources, Division of Forestry, South Dakota Department of Environment and Natural Resources, and Wyoming Department of Environmental Quality, prior to any project-related open burning. Open burning shall only be used by Applicant if no other reasonable means of solid waste disposal is available. Applicant also shall notify local fire departments at least four hours before any project-related open

burning and obtain verbal or written permission from the fire departments prior to open burning activities.

NOISE AND VIBRATION

86. Applicant shall consult with affected communities regarding Applicant's project-related construction schedule, including the hours during which construction takes place, to minimize, to the extent practicable, construction-related noise disturbances in residential areas.

87. Applicant shall ensure that curves are lubricated where doing so would reduce noise for residential or other noise sensitive receptors.

88. Prior to initiating project-related construction activities, Applicant shall develop a Construction Noise and Vibration Control Plan (the Plan) to minimize construction noise and vibration within the communities along the rail line. Applicant shall designate a noise control officer/engineer to develop the Plan, whose qualifications shall include at least five years' experience with major construction noise projects, and board certification membership with the Institute of Noise Control Engineering or registration as a Professional Engineer in Mechanical Engineering or Civil Engineering.

89. Applicant shall comply with FRA regulations (49 CFR Part 210) establishing decibel limits for train operations.

90. Applicant shall consult with interested communities along its new and existing rail line to identify measures to eliminate the need to sound train horns consistent with FRA standards.

91. Applicant shall regularly inspect rail car wheels to maintain wheels in good working order and minimize the development of wheel flats (areas where a round wheel becomes no longer round but has a flat section, leading to a clanking sound when a rail car passes). Prior to moving PRB coal trains, Applicant shall inspect new and existing rail for rough surfaces and grind these surfaces to provide a smooth rail surface during project-related rail operations.

92. As proposed by Applicant, continuously welded rail shall be used, unless it is impractical, in Applicant's project related construction and reconstruction activities.

93. Applicant shall maintain project-related construction and maintenance vehicles in good working order with properly functioning mufflers to control noise.

94. Because rail switches contain a break in the continuously welded rail which can often create additional noise and ground vibration as trains pass over or through the switch, during project-related rehabilitation of the existing rail line, Applicant shall remove or consolidate switches determined to no longer be needed.

95. Applicant shall mitigate train wayside noise (locomotive engine and wheel/rail noise) for the noise-sensitive receptors along Applicant's existing rail line and project-related new rail line construction that fall within the 70 dBA Ldn noise contour for wayside noise, as specified below. With the written concurrence of the responsible local government(s), Applicant shall mitigate wayside noise with building sound insulating treatments, including insulated windows. The design goal for noise mitigation shall be a 10 dBA noise reduction. The minimum noise reduction achieved shall be 5 dBA.

The receptors that will require mitigation will depend on the anticipated tonnage levels of coal to be moved (20 million tons, 50 million tons, or 100 million tons annually). As coal train operations increase, the 70 dBA Ldn noise contour will widen. Therefore, within 2 years of transporting 20, 50, or 100 million tons of coal annually, Applicant shall certify to the Board in its quarterly reports required by Condition 147 that it has met this condition for all affected receptors that fall within the 70 dBA noise contour for the level of coal then being moved.

Noise barrier performance shall be determined in accordance with ANSI S12.8-1987, *American National Standard Methods for Determination of Insertion Loss of Outdoor Noise Barriers*. Sound insulation performance shall be determined in accordance with ASTM 966-90, *Standard Guide for Field Measurements of Airborne Sound Insulation of Building Facades and Facade Elements.* This condition shall not apply to those communities or other entities that have executed Negotiated Agreements with Applicant.

Should noise mitigation be required at locations identified as containing structures that are potentially eligible for listing on the National Register of Historic Places, Applicant shall consult with the appropriate State Historic Preservation Officer to assess effects and implement appropriate mitigation measures.

The total number of noise sensitive receptors that meet the wayside noise mitigation criteria at the three applicable tonnage levels are listed below:

Number of Noise Sensitive Receptors that Meet Wayside Noise Mitigation Criteria

County[a] Community[b]	Total Number of Receptors - 20 million tons	Total Number of Receptors - 50 million tons[c]	Total Number of Receptors - 100 million tons[c]
MINNESOTA			
Winona	2	5	1
Olmsted	11	0	1
Chester	0	1	1
Rochester	15	29	44
Dodge	3	0	4
Steele	0	0	6
Meriden	2	4	5
Waseca	1	0	2
Smiths Mill	0	1	1
Blue Earth - Existing Rail Line	1	4	0
Smiths Mill	1	2	1
Judson	0	2	4
Cambria	0	0	3
Blue Earth - Alternative M-2	13	9	9
Blue Earth - Alternative M-3	1	5	3
Eagle Lake	3	4	11
Mankato	31	7	40
Brown	0	4	6
Essig	0	0	1
Redwood	0	0	0
Lyon	0	0	1
Burchard	0	0	0
Lincoln	0	0	1

Number of Noise Sensitive Receptors that Meet Wayside Noise Mitigation Criteria

County[a] Community[b]	Total Number of Receptors - 20 million tons	Total Number of Receptors - 50 million tons[c]	Total Number of Receptors - 100 million tons[c]
Verdi	0	0	2
SOUTH DAKOTA			
Brookings	0	7	22
Kingsbury	0	0	0
Manchester	0	0	2
Beadle	0	0	1
Hand	0	2	0
Vayland	0	0	0
Hyde	0	0	1
Holabird	0	0	0
Hughes	0	0	1
Canning	0	0	0
Alto	0	0	0
Pierre	0	13	29
Stanley	0	1	0
Wendte	0	0	2
Jones	0	0	0
Capa	0	0	0
Haakon	0	2	0
Nowlin	0	0	0
Powell	0	0	0
Jackson	0	0	0
Pennington	0	1	0
Custer	0	0	0
Fall River	0	1	0
Smithwick	0	0	0

Number of Noise Sensitive Receptors that Meet Wayside Noise Mitigation Criteria

County[a] Community[b]	Total Number of Receptors - 20 million tons	Total Number of Receptors - 50 million tons[c]	Total Number of Receptors - 100 million tons[c]
Heppner	0	0	0
Dudley	0	1	1
Marietta	0	1	0
WYOMING			
Niobrara	0	0	0
Weston	0	0	0
Campbell	0	0	0
Converse	0	0	0
TOTAL	**36[d]**	**81[e]**	**143[f]**

a Represents number of noise sensitive receptors located outside the limits of established communities within the county.
b Represents number of noise sensitive receptors located within the limits of the established community for which the receptor(s) are listed.
c Represents number of noise sensitive receptors eligible for mitigation and not mitigated under previous levels of rail operations.
d Add 13 noise sensitive receptors for Alternative M-2. Add 35 noise sensitive receptors for Alternative M-3.
e Add 9 noise sensitive receptors for Alternative M-2. Add 16 noise sensitive receptors for Alternative M-3.
f Add 9 noise sensitive receptors for Alternative M-2. Add 54 noise sensitive receptors for Alternative M-3.

96. To minimize noise and vibration, Applicant shall install and properly maintain rail and rail beds according to the AREMA standards and shall regularly maintain locomotives, keeping mufflers in good working order to control noise.

BIOLOGICAL RESOURCES

97. Applicant shall comply with the Biological Assessment that has been prepared under Section 7 of the Endangered Species Act, 16 U.S.C. 1531, and the Biological Opinion prepared by the U.S. Fish and Wildlife Service for this project.

98. Applicant shall develop and implement, in consultation with the U.S. Fish and Wildlife Service, South Dakota Department of Game, Fish and Parks, Wyoming Game and Fish Department, and Minnesota Department of Natural Resources, a habitat restoration plan designed to compensate for the loss of trees, shrubs, and other woody vegetation, prairies, and other important wildlife habitats as a result of construction and reconstruction related to this project. Applicant's plan shall focus in particular on riparian areas or other areas that are not addressed as part of wetland mitigation.

99. Applicant shall conduct a survey for raptor nests, including bald eagles, prior to the initiation of project-related construction activities. Applicant also shall attempt to minimize disturbance to active nests until after active nesting has been completed for the season. Applicant shall consult and coordinate with the applicable state agency (South Dakota Department of Game, Fish and Parks, Wyoming Game and Fish Department, or Minnesota Department of Natural Resources) to determine the appropriate action to compensate for raptor nests removed or destroyed during project-related construction activities.

100. Prior to initiating project-related construction activities, Applicant shall consult with the Natural Resource Conservation Service, local grazing associations, and interested landowners, to develop an adequate plan for controlling noxious weeds. The plan should include an approved list of herbicides.

101. Prior to initiating new rail line construction activities in South Dakota and Wyoming, Applicant shall consult with the South Dakota Department of Game, Fish and Parks, Wyoming Department of Game and Fish, and Tribal wildlife officials to develop mutually acceptable under- and overpass designs and locations to protect wildlife, particularly big game. Considerations for under- and overpass locations should include providing access to wildlife water sources, particularly for big game. Applicant shall develop additional water sources for wildlife to replace those lost, adversely affected, or rendered inaccessible to wildlife due to new rail line construction if suitable alternative sources are not available to wildlife.

102. Prior to initiating new rail line construction activities in South Dakota and Wyoming, Applicant shall coordinate with the South Dakota Department of Game, Fish and Parks, Wyoming Game

and Fish Department, and Tribal wildlife officials to develop adequate fencing standards and designs to allow for movement of wildlife, particularly big game, across the right-of-way. Applicant shall encourage the use of these types of fencing when negotiating with landowners on fence installation on private property. (See also Condition 32.)

103. Applicant shall remove carcasses from the rail line right-of-way as part of normal rail line inspection and maintenance activities.

104. Prior to initiation of project-related reconstruction activities in Minnesota and South Dakota, Applicant shall conduct a survey of the existing rail line right-of-way to identify native prairie remnants within the existing right-of-way. To the extent practicable, these areas shall be avoided during project-related reconstruction activities. Applicant also shall coordinate with the Minnesota Department of Natural Resources and the South Dakota Department of Game, Fish and Parks to develop a plan for the re-establishment of prairie vegetation in prairie remnants which cannot be avoided during project-related reconstruction activities. Such a plan should include, as appropriate, the stripping and stockpiling of topsoil for placement in the disturbed area during revegetation and the use of seed previously taken from the area or other local prairie remnants to revegetate disturbed prairie remnants within the existing right-of-way.

CULTURAL RESOURCES

105. Applicant shall provide written or other resources to inform its workers (both temporary and full-time) of the applicable Federal, state, and local requirements for the protection of archaeological resources, graves, other cultural resources, and wildlife (including those concerning threatened and endangered species), as well as the applicable requirements of trespass laws, traffic regulations (such as speed limits and weight restrictions), and regulations pertaining to waste disposal. Applicant's resources shall inform construction workers of the importance of protecting archaeological resources, graves, and other cultural resources, and how to recognize and treat these resources. Applicant shall also establish policies to deter casual collection by construction workers of cultural resources.

106. Applicant shall comply with the Programmatic Agreement and Identification Plan that has been developed through the Section 106 consultation process under the National Historic Preservation Act.

107. Applicant shall implement all the mitigation included in the Memorandum of Agreement that has been developed to ensure that the concerns of Native American Tribes related to the proposed project which are outside the Section 106 process under the National Historic Preservation Act are considered and addressed.

108. Prior to initiating project-related construction or rehabilitation of Applicant's bridge over the Missouri River located at Pierre, South Dakota, Applicant shall ensure that the Section 106 process of the National Historic Preservation Act is completed for all archaeological sites and historic structures that would be impacted by the proposed project.

ENVIRONMENTAL JUSTICE

109. Applicant shall consult and coordinate with the Lakota Sioux Tribe to develop a Hazardous Material Emergency Response Plan to account for the special needs of Tribal members on the Pine Ridge Reservation in South Dakota, particularly those inhabiting Red Shirt, South Dakota. This plan shall include Applicant-sponsored training in hazardous materials response for appropriate Tribal personnel with emphasis on methods to protect the Cheyenne River, an important resource to the Pine Ridge Reservation, in the event of a spill of petroleum products such as oil or diesel fuel, or other hazardous materials.

110. Prior to initiation of project-related construction or reconstruction activities, Applicant shall establish a Tribal Liaison to consult with interested and affected Tribes, develop cooperative solutions to the Tribes' concerns, discuss possible job opportunities for Tribal members, be available for Tribal meetings, conduct public outreach to educate the public on the importance of archaeological and paleontological resources to Native American Tribes, and conduct periodic Tribal outreach. This Tribal Liaison shall have access to Applicant's upper management. Applicant shall provide the name and phone number of the Tribal Liaison to Tribal officials including Tribal chairmen, Tribal Historic Preservation Officers, and other Tribal designees.

GEOLOGY AND SOILS

111. Applicant shall limit ground disturbance to only the areas necessary for project-related construction and reconstruction activities.

112. During project-related earthmoving activities, Applicant shall remove topsoil and segregate it from subsoil. Applicant shall also stockpile topsoil for later application during reclamation of the right-of-way. Applicant shall place the topsoil stockpiles in areas that would minimize the potential for erosion, and use appropriate erosion control measures around all stockpiles to prevent erosion.

113. Applicant shall commence reclamation of disturbed areas as soon as practicable after project-related construction ends along a particular stretch of rail line. The goal of reclamation shall be the rapid and permanent reestablishment of ground cover on disturbed areas. Applicant shall attempt to reclaim disturbed areas prior to cessation of project-related construction activities for the winter to avoid disturbed soils being subject to erosion throughout the winter. If weather or season precludes the prompt reestablishment of vegetation, Applicant shall use measures such as mulching, netting, or ground blankets to prevent erosion until reseeding can be completed.

114. Prior to initiating project-related construction activities, Applicant shall consult with the local offices of the Natural Resources Conservation Service, State Departments of Natural Resources, Fish and Game, and State Departments of Transportation, to develop an appropriate plan for restoring and revegetating the disturbed areas (including appropriate greenstrip seed mix specifications). Applicant shall monitor reclaimed areas for three years following the revegetation. For those areas where efforts to establish vegetative cover have been unsuccessful after one year, Applicant shall reseed annually until vegetative cover is established.

115. Applicant shall take reasonable steps to ensure that fill material used in project-related construction activities is free of contaminants.

116. Applicant shall design and construct the new rail line so as to consider local geologic potentials for slumping and landslides and develop and implement adequate measures to minimize the potential for these to occur.

PALEONTOLOGICAL RESOURCES

117. Prior to engaging in any project-related construction across Federal lands, Applicant shall conduct testing within the proposed right-of-way where there is a potential for paleontological resources of Class 3 or higher. This testing shall be done to the depth below ground surface at which the rail line is anticipated to be constructed. Prior to initiating project-related construction activities in the areas that warrant testing, Applicant shall prepare a paleontological resources report identifying any resources encountered, as well as the strata most likely to contain significant paleontological resources. Applicant shall submit the report to the Board and the appropriate Federal land managing agency. After submitting the report, Applicant shall consult with the appropriate Federal land managing agency to develop appropriate measures to minimize damage to paleontological resources during project-related construction. These measures may include a requirement that the Applicant retain a paleontologist to be present during earthmoving activities affecting the strata most likely to contain significant fossil resources.

118. If paleontological resources are encountered during project-related construction activities on Federal lands, Applicant shall immediately cease construction activities, inform the appropriate Federal land managing agency of the identified resource, and arrange for evaluation of the resource and determination of how to protect the resource by a qualified paleontologist. The paleontologist may be employed by the Federal land managing agency, the relevant State Historic Preservation Office, or may be retained by Applicant. Any paleontological resources recovered from project-related construction activities across Federal lands shall remain the property of the United States Government.

119. If significant paleontological resources are encountered during project-related construction activities on private lands, construction crews shall notify the appropriate agencies and take appropriate actions at the work site to protect paleontological resources.

NEGOTIATED AGREEMENTS

120. Applicant shall comply with the terms of all Negotiated Agreements developed with local communities regarding environmental issues associated with the PRB Expansion Project. The following list provides the Negotiated Agreements received by the Board to-date:

Negotiated Agreements			
Minnesota			
Balaton	Byron	Claremont	Cobden
Dodge Center	Dover	Eyota	Garvin
Janesville	Kasson	Lake Benton	Lamberton
Lewiston	Minnesota City	New Ulm	Owatonna
Revere	Sanborn	Sleepy Eye	Springfield
Stockton	St. Charles	Tracy	Tyler
Utica	Walnut Grove	Waseca	
South Dakota			
Arlington	Aurora	Blunt	Cavour
Cottonwood	Desmet	Elkton	Ft. Pierre

Negotiated Agreements			
Harrold	Hetland	Highmore	Huron
Iroquois	Lake Preston	Midland	Miller
Phillip	Quinn	Ree Heights	St. Lawrence
Volga	Wall	Wessington	Wolsey

SITE-SPECIFIC MITIGATION MEASURES

Minnesota

121. Applicant shall install two grade separated crossings in Rochester, Minnesota, at Broadway Avenue, East Circle Drive, West Silver Lake Drive/2nd Avenue NE, 6th Avenue, or another mutually acceptable location. Applicant shall consult with the FRA, Federal Highway Administration (FHWA), appropriate state and local transportation authorities, and the City of Rochester on the design (for example, whether the road would go over or under the rail line), location, and funding of these grade separations. Applicant shall complete installation of one grade separated crossing prior to transporting more than 20 million tons of coal annually through Rochester for more than one year. Applicant shall complete installation of a second grade separated crossing prior to transporting more than 50 million tons of coal annually through Rochester for more than one year. These grade separated crossings should be designed and located to facilitate the movement of emergency vehicles to and from medical facilities providing emergency services in Rochester, including St. Mary's Hospital and Methodist Hospital, which are both facilities of the Mayo Clinic. During the Board's oversight period, Applicant shall apprise SEA of the progress being made toward implementation of this condition in the quarterly reports required by Condition 147.

122. Prior to initiation of project-related reconstruction activities in Rochester, Minnesota, Applicant's upper management shall meet with representatives of the Mayo Clinic to consult and coordinate with the Mayo Clinic on how best to minimize project-related impacts on the Clinic. Applicant's upper management shall continue to meet with Clinic representatives on a regular basis during the Board's oversight period.

123. Applicant, prior to transporting 50 million tons of coal annually through Rochester, Minnesota, shall coordinate with the City of Rochester, Olmsted County, Minnesota Department of

Transportation, and FRA to develop additional grade-crossing protection devices at the existing grade crossing of Broadway Avenue. This is necessary because the accident frequency at this crossing would exceed the Board's criteria of significance, even with the protection proposed in DM&E's Grade Crossing Mitigation Plan, which is discussed in Condition 1.

124. In determining the final design and location of sidings constructed as part of project-related rail line construction, Applicant shall consider the feasibility of shifting the location of the siding proposed in the area of Minneopa State Park in Minnesota to avoid the park. If Applicant determines that it is necessary to build a siding in the park, Applicant shall consider the feasibility of constructing the siding on the south side of the tracks on the eastern end, to avoid channel changes in the Minnesota River, or on the north side of the existing track on the west end, to minimize wetland impacts. Applicant shall report the results of its considerations to the Board as a part of its reporting under Condition 147.

125. In determining the final design and location of sidings constructed as part of project-related rail line reconstruction, Applicant shall consider locating the siding proposed in the area between Sanborn and Lamberton in Redwood County, Minnesota, on the north side of the existing rail line to avoid impacting the well-vegetated, intact riverbanks on the south side of the existing line. Applicant shall report the results of its considerations to the Board as part of Condition 147.

126. If Applicant determines that the bridge over the access road to Lake Benton, Lincoln County, Minnesota requires reconstruction to permit the movement of unit coal trains, Applicant shall consult with the Minnesota DOT to consider ways to design and construct the bridge so as to ensure the safe passage of emergency vehicles.

127. Applicant shall coordinate with the City of Courtland, Minnesota to ensure protection of the city's sewer line during project-related reconstruction of the existing rail line.

128. If Alternative M-2, the Mankato, Minnesota southern route, is built, Applicant shall consult with Blue Earth County, Minnesota, to explore the feasibility and cost effectiveness of constructing any new rail line on a trestle or bridge rather than fill in the Blue Earth River valley.

129. If Alternative M-2, the Mankato, Minnesota southern route, is built, Applicant, prior to transporting 50 million tons of coal annually over Alternative M-2, shall coordinate with Blue Earth County, Minnesota DOT and the FRA to develop additional grade-crossing protection devices at the proposed crossing of Township Road 194. This is necessary because the accident frequency at this crossing would exceed the Board's criteria of significance, even with the protection proposed in DM&E's Grade Crossing Mitigation Plan, which is discussed in Condition 1.

130. If Alternative M-2, the Mankato, Minnesota southern route, is built, Applicant shall coordinate with Mount Kato Ski Area to minimize, to the extent practicable, the potential impacts of construction of Alternative M-2 across ski area property.

131. Applicant shall consider installation of a pedestrian and bike underpass of the Red Jacket Trail in Blue Earth County, south of Mankato, Minnesota, if Alternative M-2, the Mankato, Minnesota southern route, is built. At a minimum, Applicant shall install and maintain warning signs clearly advising the public to proceed with caution due to the possible presence of trains.

132. If Alternative M-2, the Mankato, Minnesota southern route, is built, Applicant shall attempt to avoid the holding pond for County Highway 90 at Saddle Club, Blue Earth County, Minnesota. If the holding pond cannot be avoided, Applicant shall consult with Blue Earth County regarding its replacement and be responsible for the costs associated with replacing the holding pond.

133. If Alternative M-2, the Mankato, Minnesota southern route is built, Applicant shall consult with Blue Earth County, Minnesota regarding whether the portion of Alternative M-2 west of Mankato, Minnesota can be constructed so as to avoid or minimize impacts to the proposed Minneopa Trail.

134. Applicant shall work with the City of Mankato, Minnesota to determine if additional access can be developed to Land of Memories Park. Should a mutually acceptable plan for additional access be developed, Applicant shall work with the City to help the City secure funding for the project.

135. If Alternative M-3, the existing rail corridor alternative through Mankato, is built and Applicant determines that it must rebuild the existing bridge over the Blue Earth River to permit operation of unit coal trains, Applicant shall consider incorporating a pedestrian/bicycle crossing as part of the new rail bridge design.

136. If Alternative M-3, the existing rail corridor alternative through Mankato, Minnesota is built, for the pedestrian crossings of the Sakatah Singing Hills State Trail in Blue Earth County, Applicant shall install and maintain warning signs clearly advising the public to proceed with caution due to the possible presence of trains.

137. Applicant shall consider locating the Middle East Staging and Marshaling Yard near New Ulm, Minnesota in such a way to allow residents of Shag Road access to Shag Road from both ends

of the rail yard. Applicant shall report the results of its considerations to the Board as part of its reporting under Condition 147.

South Dakota

138. Applicant shall install a grade separated crossing in Pierre, South Dakota, at Sioux Avenue or another mutually acceptable location, to be completed within one year after DM&E transports more than 50 million tons of coal through Pierre annually for more than one year. Applicant shall consult with the FRA, FHWA, appropriate State and local transportation authorities, and the City of Pierre on the design (for example, whether the road would go over or under the rail line), location, and funding of this separation. Applicant shall apprise SEA of the progress being made toward implementation of this condition in the quarterly reports required by Condition 147.

139. Applicant shall consider improving the existing rail line underpass off of Park Street in Fort Pierre, South Dakota to allow a paved crossing suitable for passage of emergency vehicles as part of any project-related reconstruction or replacement of the existing Bad River Bridge.

140. Applicant shall consult with the City of Wall, South Dakota and the South Dakota Department of Transportation to consider whether the proposed new rail line west of Wall can be designed and constructed to allow the expansion of the Wall Municipal Airport, as currently proposed.

141. Applicant shall consult with the South Dakota Department of Transportation to consider whether the grade separation of US Highway 18 east of Edgemont, South Dakota proposed in Applicant's Grade Crossing Mitigation Plan can be designed so as to accommodate future expansion of this highway to four lanes.

142. If Applicant determines that the bridge over 6th Avenue in Brookings, South Dakota, requires reconstruction to permit movement of unit coal trains, Applicant shall coordinate with the City of Brookings and the South Dakota Department of Transportation to explore whether the bridge can be designed and constructed to permit the passage of all emergency vehicles.

143. For the pedestrian crossings at 12th Avenue, 6th Avenue, and the Interstate 29 pedestrian and bike trail in Brookings, South Dakota, Applicant shall install and maintain warning signs clearly advising the public to proceed with caution due to the possible presence of trains.

Wyoming

144. Applicant, prior to transporting 50 million tons of coal annually over Alternative C, shall coordinate with Niobrara County, Wyoming Department of Transportation (Wyoming DOT), and FRA to develop additional grade-crossing protection devices at the proposed crossing of U.S. Highway 85. Additionally, Applicant, prior to transporting 50 million tons of coal annually over Alternative C, shall coordinate with Campbell County, Wyoming DOT and the FRA to develop additional grade crossing protection devices at the proposed crossing of Bishop Road, and shall do the same for State Highway 450 prior to transporting 100 million tons of coal annually. This is necessary because the accident frequency at these crossings would exceed the Board's criteria of significance, even with the protection proposed in DM&E's Grade Crossing Mitigation Plan, which is discussed in Condition 1.

Monitoring and Enforcement

145. If there is a material change in the facts or circumstances upon which the Board relied in imposing specific environmental mitigation conditions, or if there are unanticipated environmental problems that arise during the oversight period, the Board will take appropriate action. Any community or other interested party may seek redress by filing a petition to demonstrate material change or unanticipated problems during the environmental oversight period. The Board may review the continuing applicability of its final mitigation and impose additional or modified conditions if warranted.

146. Applicant shall retain a third-party contractor to assist SEA in the monitoring and enforcement of mitigation measures on an as-needed basis until Applicant has completed project-related construction and reconstruction activities, as well as during the environmental oversight period.

147. To ensure Applicant's compliance with the environmental mitigation conditions imposed by the Board, Applicant shall submit to SEA reports on a quarterly basis for the duration of the oversight period, documenting the status of its mitigation implementation for each condition. The oversight period in this case shall be the first two years of project-related operations.

* * * * *